REMARKS

In response to the above-identified Final Office Action ("Action"), Applicants traverse the Examiner's rejection to the claims and seek reconsideration thereof. Claims 1, 4 and 6-15 are now pending in the present application. Claims 1, 4 and 6-15 are rejected. In the instant response, claims 1, 6 and 15 are amended, no claims are cancelled and claim 16 is added.

I. Examiner Interview Summary

Applicants respectfully acknowledge with appreciation the Examiner's granting of an interview on April 7, 2008 via telephone with Applicants' representative Stacie J. Sundquist. During the interview the rejection of claim 1 under 35 U.S.C. §103 in view of the various prior art references was discussed. Applicants' representative further discussed with the Examiner proposed amendments to claim 1. The Examiner suggested that if the claims were amended to recite specific glycols, silicones, quaterniums and polymer viscosity modulators and their amounts present in the composition, use the language "consisting of" and/or recite a lower pH range, the claims may be in condition for allowance. No agreements were reached during the interview.

II. Claim Amendments

Applicants respectfully submit herewith amendments to claims 1, 6 and 15 and new claim 16. Claims 1 and 15 are amended to include specific weight percentages for various components of the composition. Claim 1 is further amended to recite that it is suitable for being left on the skin and claim 15 is amended to recite that the composition has a pH of less than 3. Support for the amendments to claims 1 and 15 may be found, for example, in previously presented claim 6, Examples 1-4 on pages 6-9, and page 3, paragraph [0012] of the Application.

Claim 6 is amended to delete the weight percentages of silicone, quaternium and polymer viscosity modulator for consistency with the amendments to claim 1.

Claim 16 is added and recites a "composition consisting of a glycol; a silicone, wherein the amount of silicone present in the composition is 4% to 30% by weight; a quaternium; a

polymer viscosity modulator; and wherein the composition is suitable for being left on the skin and has a pH of less than 3.0." Support for new claim 16 may be found, for example, in original claims 1 and 15 and page 3, paragraphs [0013] and [0014] of the Application.

Applicants respectfully submit the amendments do not add new matter and are supported by the specification. Accordingly, Applicants respectfully request consideration and entry of the amendments to claims 1, 6 and 15 and new claim 16.

III. Claim Rejections – 35 U.S.C. §103

A. In the outstanding Action, claims 1, 4, 7 and 13 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,818,523 issued to Clarke et al. ("Clarke"). Applicants respectfully traverse the rejection.

To establish a *prima facie* case of obviousness, the Examiner must set forth "some articulated reasoning with some rational underpinning to support the conclusion of obviousness." See *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007). In combining prior art elements to render the claimed combination of elements obvious, the Examiner must show that the results would have been predictable to one of ordinary skill in the art. See *Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103*, Section III(D), issued by the U.S. Patent and Trademark Office on October 10, 2007.

In regard to independent claim 1, Applicants respectfully submit Clarke fails to disclose or render predictable a composition including each of the elements of "a silicone, wherein the amount of silicone present in the composition is 4% to 30% by weight; a quaternium, wherein the amount of quaternium present in the composition is 3% to 20% by weight; a polymer viscosity modulator, wherein the amount of polymer viscosity modulator present in the composition is 0.2% to 1% by weight; and wherein the composition is suitable for being left on the skin, free of an alpha-hydroxy acid and has a pH in a range of 2.8 to 3.2" as recited in amended claim 1.

Instead, Clarke discloses an easily removable hair rinse conditioner. See Clarke, Abstract. As recognized by the Examiner, Clarke discloses in Example 2 and col. 9, lines 20-25

that the conditioner includes 0.5% propylene glycol, 1% cyclomethicone, 1% dodecyl trimethyl ammonium chloride and hydroxyethylcellulose. Thus, Clarke fails to disclose an amount of each component within, overlapping or even close to the claimed ranges. Moreover, Applicants respectfully disagree with the Examiner's indication that Clarke's teaching of "suitable acids which may be used when needed are citric acid and the like" (emphasis added) suggests achieving the claimed pH ranges using acids other than alpha-hydroxy acid (AHA). In particular, if the foregoing disclosure suggests the use of acids other than citric acid, it would be acids "like" citric acid, i.e. other AHAs.

Finally, Clarke fails to disclose a composition "suitable for being left on the skin" as further recited in claim 1. Rather, as previously discussed, Clarke discloses an easily removable hair rinse conditioner. Hair rinse conditioners are not left on the hair, much less the user's skin. Applicants respectfully note that the element of "suitable for being left on the skin" provides a structural difference between the claimed composition and that of the prior art and should therefore be given patentable weight during examination. In particular, in contrast to conditioners or compositions which include phosphoric acid (see Flick$_1$) and therefore cannot be left on the skin, the claimed composition includes ingredients which achieve a low pH composition which is suitable for being left on the skin without irritating the skin. Accordingly, the element of "suitable for being left on the skin" provides a patentable distinction between the claimed composition and the prior art.

Thus, for at least the foregoing reasons, Clarke fails to disclose or render predictable each and every element of claim 1. Since each of the elements of claim 1 are not obvious in view of the cited prior art, a *prima facie* case of obviousness may not be established. Applicants respectfully request reconsideration and withdrawal of the rejection of claim 1 under 35 U.S.C. §103 over Clarke.

In regard to claims 4, 7 and 13, these claims depend from claim 1 and incorporate the limitations thereof. Thus, for at least the reasons that claim 1 is not obvious over Clarke, claims 4, 7 and 13 are further not obvious over the cited prior art reference. Applicants respectfully request reconsideration and withdrawal of the rejection of claims 4, 7 and 13 under 35 U.S.C. §103 over Clarke.

B. In the outstanding Action, claims 1, 4, 6-9 and 11-15 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,709,773 issued to Espinoza ("Espinoza") in view of *Cosmetic and Toiletry Formulations* by Flick ("Flick$_1$"). Applicants respectfully traverse the rejection.

In regard to independent claims 1 and 15, Applicants respectfully submit Espinoza and Flick$_1$ fail to disclose or render predictable at least the elements of a composition including 0.2% to 1% by weight of a polymer viscosity modulator wherein the composition is free of an alpha-hydroxy acid and has a pH in a range of 2.8 to 3.2 (claim 1) or less than 3 (claim 15) and suitable for being left on this skin as recited in the claims.

Espinoza generally discloses a multivesicular emulsion drug delivery cream composition having an alpha-hydroxy acid (AHA). Flick$_1$ discloses a shower gel in which the pH is adjusted with phosphoric or citric acid. Although Espinoza discloses that hydroxyehylcellulose may be a suitable thickening agent, Applicants are unable to discern any portion of the sample formulations (i.e. sunscreen lotion and self tanning cream) relied upon by the Examiner to disclose the elements of claims 1 and 15 listing a thickening agent much less a particular amount of thickening agent. Thus, Espinoza fails to disclose a composition including 0.2% to 1% by weight of a polymer viscosity modulator.

Moreover, Espinoza may further not be relied upon as alleged by the Examiner to disclose the claimed AHA free composition of claims 1 and 15 at the claimed pH ranges. In particular, the sentence ending in col. 5, lines 1-2 (which begins on line 64 of col. 4) of Espinoza which the Examiner alleges implies the claimed pH ranges are obvious, recites the following:

> "A particularly preferred thickening agent for use in the formulations of the present invention, especially in the case of gels/serums, in the nonionic polymer hydroxyethylcellulose, which is compatible with strontium nitrate and is stable at pH values around 3."

Applicants are unable to discern, however, where within the sample formulations for the sunscreen lotion and self-tanning cream, relied upon by the Examiner, the ingredient

hydroxytheylcellulose is disclosed. Accordingly, this portion of Espinoza may not be relied upon to disclose that the pH of the sunscreen lotion and self tanning cream are within the claimed pH ranges of claims 1 and 15.

Flick$_1$ may further not be relied upon to cure the deficiencies of Espinoza with respect to the claimed AHA free composition having the claimed pH ranges. Flick$_1$ discloses the use of either citric acid or phosphoric acid to modify the pH of a shower gel. The Examiner therefore alleges Flick$_1$ suggests the use of an acid other than an AHA (e.g. phosphoric acid) to adjust the pH to the claimed range. A composition including phosphoric acid, however, is not suitable for being left on the skin as claimed. Although phosphoric acid may be used to adjust the pH of a shower gel such as that disclosed in Flick$_1$ which is rinsed off the skin, one of ordinary skill in the art would not understand such an acid to be suitable for a composition which is left on the skin as claimed. Thus one of ordinary skill in the art would not understand any reason to modify Espinoza in view of Flick$_1$ to achieve the claimed combination of elements.

For at least the foregoing reasons, claims 1 and 15 are not *prima facie* obvious over Espinoza and Flick$_1$. Applicants respectfully request reconsideration and withdrawal of the rejection of claims 1 and 15 under 35 U.S.C. §103 over Espinoza and Flick$_1$.

In regard to claims 4, 6-9 and 11-14, these claims depend from claim 1 or claim 15 and incorporate the limitations thereof. Thus, for at least the reasons that claims 1 and 15 are not obvious over Espinoza and Flick$_1$, claims 4, 6-9 and 11-14 are further not obvious over the cited prior art references. Applicants respectfully request reconsideration and withdrawal of the rejection of claims 4, 6-9 and 11-14 under 35 U.S.C. §103 over Espinoza and Flick$_1$.

C. In the outstanding Action, claim 10 is rejected under 35 U.S.C. §103(a) as being unpatentable over Espinoza in view Flick$_1$ as applied to claims 1, 4, 6-9 and 13-15, and further in view of *Cosmetics Additives* by Flick ("Flick$_2$"). Applicants respectfully traverse the rejection.

Claim 10 depends from claim 1 and incorporates the limitations thereof. Thus, for at least the reasons previously discussed, the combination of Espinoza and Flick$_1$ may not be relied upon to disclose or render predictable at least the elements of a composition including 0.2% to

1% by weight of a polymer viscosity modulator wherein the composition is free of an alpha-hydroxy acid and has a pH in a range of 2.8 to 3.2 which is suitable for being left on this skin as recited in claim 1. The Examiner has further not pointed to, and Applicants are unable to discern, a portion of Flick$_2$ curing the deficiencies of Espinoza and Flick$_1$ with respect to each of these elements. Thus, for at least the foregoing reasons, claim 10 is not *prima facie* obvious over Espinoza, Flick$_1$ and Flick$_2$. Applicants respectfully request reconsideration and withdrawal of the rejection of claim 10 under 35 U.S.C. §103 over Espinoza, Flick$_1$ and Flick$_2$.

IV. New Claim 16

Claim 16 recites the elements of "a composition consisting of: a glycol; a silicone, wherein the amount of silicone present in the composition is 4% to 30% by weight; a quaternium; a polymer viscosity modulator; and wherein the composition is suitable for being left on the skin and has a pH of less than 3.0." For at least the reasons previously discussed, neither Clarke, Espinoza, Flick$_1$ or Flick$_2$ disclose a composition ***consisting of*** each of the above-recited elements. Thus, claim 16 is neither anticipated by nor obvious in view of the cited prior art references. Applicants respectfully request consideration and allowance of claim 16 at the Examiner's earliest convenience.

CONCLUSION

In view of the foregoing, it is believed that all claims now pending, namely claims 1, 4 and 6-15, are now in condition for allowance and such action is earnestly solicited at the earliest possible date. If there are any additional fees due in connection with the filing of this response, please charge those fees to our Deposit Account No. 02-2666. Questions regarding this matter should be directed to the undersigned at (310) 207-3800.

Respectfully submitted,

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CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being submitted electronically via EFS Web to the United States Patent and Trademark Office on April 22, 2008.

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